the vegetables were strewn about. The plaintiff was a hapless victim in an emergency situation created negligently by the defendant. I found the plaintiff totally blameless though the driver of that car who was not a party in this case, was negligent to some extent in giving a somewhat confusing signal. It would be unnecessary to discuss further regarding the driver of that stationary car. In the circumstances I found the defendant liable to the plaintiff who was not guilty of any contributory negligence.

The plaintiff sustained a fracture of a thoracic vertebra, leading to dense spastic paraplegia of both lower extremities *i.e.* inability to make use of her legs to walk, stand, squat and fend for herself, requiring help for her toilet and general body care, her condition being in effect, paralysis from the waist down. Learned counsel for defendant suggested a sum of $70,000 while learned counsel for plaintiff suggested a sum of between $100,000 to $120,000. In view of her advanced age, she being about 64 years old at the time of accident in 1982, I awarded a sum of $70,000.

For fractures of tibia and fibula, shortening of leg of 2 c.m , I found that the said shortening would not cause any more suffering than that already caused by her dense spastic paraplegia. I took into account the resulting overlapping effect and her age also in awarding only $6,000 for the fractures and shortening.

Curiously, the plaintiff, a living person, made a rather unusual claim for damages for loss of expectation of life which are almost invariably claimed for the estate of a deceased person. This however was a valid claim It is interesting to observe that this sort of claim was originally held to be confined to living plaintiffs and in *Flint* v. *Lovell*,[4] it was held that such a claim was not transmitted to the estate of a deceased person. The House of Lords in *Rose* v. *Ford*[5] upheld such a claim by a personal representative of a deceased. I awarded $2,000 only, a sum less than the conventional figure of $4,000, taking into account her advanced age.

As a result of her immobility, bladder stones would be formed and they would be a source of recurrent infections which could go to the kidney resulting finally in renal failure. Such stones would have to be washed out once in every four months. Dr. Kumar (PW 4) said she would have 5 to 6 years left of her life span. I assessed the remainder of her life span at 5 years which would give rise to 6 to 15 washings of the bladder. For pain and suffering in connection with these 15 washings, I awarded a sum of $7,000 taking into account contingencies.

I awarded $300 for the laceration of the right elbow. All the sums above-mentioned so far, would carry interest at 8% per annum from the date of service to date of satisfaction.

For the cost of nursing care for the whole year of 1983, I awarded $200 per month; for the whole year of 1984, at $250 per month, and from January 1, 1985 to date of judgment at $300 per month. I awarded cost of wheelchair at $420, and for cost of surgery already incurred, a sum of $2,808. I also awarded travelling expenses of various kinds, as specified in the order extracted and for all these sums mentioned in this paragraph, I awarded interest at 4% per annum from date of accident to date of judgment and thereafter at 8% per annum until satisfaction.

I also awarded cost of nursing care at $350 per month adopting the figure of 5 as the number of years' purchase by employing analogically the annuity tables. I also awarded cost of washing bladder at the rate of $150 per month which was arrived at by dividing the total cost of such washing for one year by 12. I also awarded costs to the plaintiff.

Order accordingly.

Solicitors: *E. Ramasamy & Co., Sri Ram, Zulkifly & Kumar.*

LEE SOH CHOO v. TAN KET HUAT

[O.C.J. (Siti Norma Yaakob J.) April 7, 1986]

[Kuala Lumpur – Originating Summons No. F. 2052 of 1985]

Family Law – Custody of children.

The applicant and the respondent in this application for custody were married on June 7, 1980 and from this union, a daughter was born on December 2, 1980 and a son on May 3, 1982. Since 1982, the applicant and respondent had been experiencing matrimonial problems which resulted in the present application by the applicant/wife seeking custody of the two children.

Held, dismissing the application: the applicant should be granted access to the children every Sunday from 9 a.m. to 6 p.m and should circumstances change that warrant a change in custody, the applicant will be at liberty to apply.

Observation: there is no substitute for a mother's love and attention, especially when the children are of tender

years but where a mother like the applicant has shown that she will not be able to devote her full attention to them and will greatly rely on others to do so, in the interest and welfare of the children, their custody should continue to remain with the respondent. A change at this point of time would be too upsetting to them especially so in this case where the applicant is still quite undecided whether to send them to her mother in Kedah or to leave them with her brother and his wife in Kuala Lumpur.

ORIGINATING SUMMONS.

Balwant Singh Sidhu for wife applicant.
T. F. Chin for husband respondent.

Cur. Adv. Vult.

Siti Norma Yaakob J.: The applicant and the respondent in this application for custody were married on June 7, 1980 and from this union, a daughter was born on December 2, 1980 and a son on May 3, 1982. It is not disputed that since 1982, the applicant and the respondent had been experiencing matrimonial problems and from their affidavits, there are conflicting reasons given as to the cause of such problems. The applicant states that she had been mistreated and assaulted by the respondent and on June 6, 1985, he had beaten her up, drove her out of the matrimonial home and she was not able to take the children with her. For this single act of cruelty, she relies on a police report made on the same evening following the assault. The respondent on the other hand alleges that the applicant had never been much of a mother to the children as she had neglected them and had spent a lot of time outside the matrimonial home. He disputes the contents of the police report and maintains that the cause of her leaving the matrimonial home had been highly exaggerated by the applicant. Whatever was the true cause of her leaving the matrimonial home on June 6, 1985, it must have been the culmination of their unhappy differences and it was following this that the applicant filed the present proceedings for custody of the two children.

Although the applicant has given an address in Sungei Besi as her present place of abode, it is not clear to whom the premises belong to, or whether she is occupying the premises as a tenant, or whether the premises is the home of her brother and his family in whose care she intends to leave the two children if custody is granted to her. As an alternative, she is also considering taking the two children to live with her parents in Kedah. Presently she works at Damansara Jaya selling cosmetics as she needs a job to maintain herself. From her affidavit, I concluded that the applicant will not be able to care for the children herself and will have to rely largely on her brother and sister-in-law or on her parents in Kedah. That being the case, I do not consider the uncertainty as to where eventually the children will be housed can work towards the welfare and the proper upbringing of the children.

On the other hand, the children are still at the matrimonial home, an environment they have been used to and adapted to since they were very young. They are being taken care of by the respondent and his mother and the elder of the two children attends a kindergarten that has reported that she has adapted very well to school life and enjoys going to school. As for the younger child, there is no evidence of any ill treatment and for that matter, there is no proof that the health of any of them is in any way threatened by their continuing to live with their father.

I am fully aware that there is no substitute for a mother's love and attention, especially when the children are of tender years but where a mother like the applicant has shown that she will not be able to devote her full attention to them and will greatly rely on others to do so, in the interest and welfare of the children, I have considered that their custody should continue to remain with the respondent. A change at this point of time would be too upsetting to them especially so in this case where the applicant is still quite undecided whether to send them to her mother in Kedah or to leave them with her brother and his wife in Kuala Lumpur. In dismissing her application, I had however granted her access to the children every Sunday from 9.00 a.m. to 6.00 p.m. and should circumstances change that warrant a change in custody, the applicant is at liberty to apply.

Order accordingly.

Solicitors: *Balwant Singh Sidhu & Co.; Chin & Rakan-Rakan.*